

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO. 07 C 4499
v.	)	
	)	
BFI WASTE SYSTEMS OF NORTH	)	
AMERICA, INC.,	)	
BORDEN CHEMICAL, INC., AS	)	
SUCCESSOR IN INTEREST TO	)	Judge Lefkow
IB DISTRIBUTORS, INC.	)	
EXXON MOBIL CORPORATION,	)	
GIDDINGS & LEWIS MACHINE	)	
TOOLS, LLC, AS SUCCESSOR IN	)	
INTEREST TO BASIC ELECTRONICS	)	
MFG. CORP.,	)	
H. B. FULLER COMPANY,	)	
HONEYWELL, INC.,	)	
JENSEN DISPOSAL SERVICE, INC.	)	
MAIL-WELL ENVELOPE CO.,	)	
MORTON INTERNATIONAL, INC.,	)	
MUNDELEIN DISPOSAL SERVICE,	)	
INC.,	)	
VILLAGE OF WAUCONDA, ILLINOIS,	)	
WASTE MANAGEMENT OF ILLINOIS,	)	
INC.,	)	
WAUCONDA SAND & GRAVEL, CO.,	)	
and WEBER FOREIGN	)	
MANUFACTURING, INC., f/k/a INK	)	
SPECIALTIES COMPANY, INC.	)	
	)	
Defendants.	)	
	)	

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**CONSENT DECREE  
FOR REMEDIAL ACTION/COST RECOVERY  
WAUCONDA SAND & GRAVEL SUPERFUND SITE  
WAUCONDA, ILLINOIS**

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**APPENDICES:** Appendix A: Remedial Action Work Plan

Appendix B: Documents Comprising Known Information and Conditions

## **I. BACKGROUND**

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606, 9607, and to Section 7003 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6973.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Wauconda Sand & Gravel Superfund Site in Wauconda, Illinois (the “Site”), together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Illinois (the “State”) on December 16, 2005, of negotiations with potentially responsible parties regarding the completion and integration of ongoing remedial obligations under the various Records of Decision and Orders as well as the implementation of the future remedial design and remedial actions for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), on November 7, 2005, EPA notified the United States Department of the Interior (DOI), as the Federal natural resource trustee, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under

Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

E. The defendants that have entered into this Consent Decree (“Settling Defendants”) do not admit any liability arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that there have been releases or threatened releases of hazardous substance(s) at or from the Site, nor do they acknowledge that such alleged releases constitute an imminent or substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983 (48 Fed. Reg. 40658).

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced in June 1983 a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site pursuant to 40 C.F.R. § 300.430.

H. EPA completed a Remedial Investigation (“RI”) Report on August 29, 1984 and EPA issued a Remedial Investigation Analysis/Development of Alternatives Report on November 1, 1984.

I. Following additional sampling, EPA issued a Remedial Investigation Supplement on July 15, 1985, and a Feasibility Study on August 1, 1985.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. EPA held a public meeting in the Wauconda Township Hall, 505 Bonner Road, on August 14, 1985.

Approximately 25 people attended and questions posed during the meeting are addressed in the Community Relations Responsiveness Summary. EPA issued a Record of Decision, which includes the Community Relations Responsiveness Summary, on September 30, 1985.

K. A second Supplemental Remedial Investigation/Feasibility Study ("SRI/FS") was prepared by a group of potentially responsible parties, known as the Wauconda Task Group ("WTG"), pursuant to an Administrative Consent Order ("AOC1") issued by EPA on July 28, 1986. (Docket # V-W-86-C-0006). The WTG completed the final SRI/FS in November 1987. EPA and the State prepared an Amendment to the final SRI/FS in April of 1988. This Amendment along with the November 1987 report constitutes the complete SRI/FS. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, on April 25, 1988, EPA published notice of the completion of the SRI/FS and of the Proposed Plan for remedial action in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. EPA held public meetings in the Wauconda Township Hall, 505 Bonner Road, on May 11, 1988, and on December 14, 1988. Copies of the transcripts of the public meetings are available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

L. The decision by EPA on the remedial action to be implemented at the Site is embodied in two Records of Decision ("RODs"); the first ROD (ROD1), an interim ROD, was executed on September 30, 1985, on which the State has given its concurrence, and the second ROD (ROD2) was executed on March 31, 1989, on which the State has also given its concurrence. The RODs include a responsiveness summary to the public comments. Notice of

the final plan was published in accordance with Section 117(b) of CERCLA.

M. The WTG, together with BFI Waste Systems of North America, Inc., has been and continues to implement the work required under the RODs pursuant to an Administrative Order on Consent (“AOC2”) issued on September 30, 1988 (requiring work up to May 31, 1989), and pursuant to a Unilateral Administrative Order (“UAO1”), issued on December 10, 1989.

N. On April 20, 1994, a Consent Decree (the “1994 Consent Decree”) was entered in the United States District Court for the Northern District of Illinois, between the United States and certain parties in which the settling defendants to the 1994 Consent Decree agreed to reimburse the United States for certain past costs and future costs the United States had incurred and would incur in overseeing the implementation of the remedial action set forth in ROD1 and ROD2.

O. Additional testing, beginning in September 2003, has found the existence of vinyl chloride, a hazardous substance, in the groundwater at locations east and southeast of the landfill.

In response to the discovery of vinyl chloride in the groundwater, on September 27, 2004, EPA issued a second Unilateral Administrative Order (“UAO2”) to certain respondents, including most of the Settling Defendants, to conduct further investigation at the site. UAO2 requires certain additional sampling and monitoring of residential drinking water wells, the performance of additional remedial investigations, including hydrogeologic and water quality characterizations, and an additional Feasibility Study to evaluate remedial alternatives. UAO2 also requires the reimbursement of EPA's response costs for overseeing respondents’

implementation of the UAO.

P. By letter dated November 19, 2004, Settling Defendants proposed, inter alia, to provide bottled water to all residents not currently on municipal water in the Hillcrest, Lakeview Villa, and North Shore subdivisions until a public water system was available to the residents. In their letter, the Settling Defendants requested that EPA suspend the effective date of UAO2 while the Settling Defendants developed a proposal to provide permanent public water connections to residents in the Hillcrest, Lakeview Villa, and North Shore subdivisions. The bottled water and permanent public water connections plan was also subsequently expanded to include the Wellsmere, Spencer Highlands, and Elmcrest subdivisions and homes on Garland Road south of Bonner Road.

Q. By letter dated November 22, 2004, EPA agreed to consider the Settling Defendants' proposal, authorized proceeding with development of a plan for providing public water, and suspended the effective date of UAO2 to allow the Settling Defendants to develop their proposal.

R. The Settling Defendants to this Consent Decree agree to effect an extension of and connections to the Village of Wauconda public water system to provide residences in the public water supply service area with public water pursuant to the Remedial Action Work Plan.

S. Based on the information presently available to EPA, EPA believes that the Work already performed pursuant to RODs 1 and 2, AOCs 1 and 2, and UAO1, and to be performed as described in this Consent Decree will be properly and promptly implemented by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.



T. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, Section 7003 of RCRA, 42 U.S.C. § 6973, and Sections 106, 107, and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor

hired by the Settling Defendants to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

#### **IV. DEFINITIONS**

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

**“CERCLA”** shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

**“Consent Decree”** or **“Decree”** shall mean this Decree and all appendices hereto. In the event of a conflict between this Decree and any appendix, the Decree shall control.

**“Day”** shall mean a calendar day unless expressly stated to be a working day.

“Working Day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next Working Day.

“**Effective Date**” shall be the effective date of this Consent Decree as provided in Paragraph 103.

“**EPA**” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“**Future Oversight Costs**” shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Settling Defendants' performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, inter alia: the costs incurred by the United States pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls), XV (Emergency Response), and Paragraph 85 (Work Takeover) of Section XXI (Covenant Not to Sue by Plaintiff), or the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XIX (Dispute Resolution) and all litigation costs.

“**Future Response Costs**” shall mean all costs incurred following the date of entry of this Consent Decree, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree,

verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 85 of Section XXI. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Settling Defendants have agreed to reimburse under this Consent Decree that have accrued pursuant to 42 U.S.C. § 9607(a) up to and including the date of entry of this Consent Decree. For the purpose of this Paragraph, Interest on Past Response Costs which the Settling Defendants have agreed to pay under this Consent Decree, began to accrue on July 7, 2005.

**“Interest,”** shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of Interest shall be the rate in effect at the time the Interest accrues. The rate of Interest is subject to change on October 1 of each year.

**“Interim Response Costs”** shall mean all response costs, including direct and indirect costs, (a) paid or incurred by the United States in connection with the Site from May 1, 2005 up to and including the date of entry of this Consent Decree, or (b) incurred up to and including the date of entry of this Consent Decree but paid after that date.

**“National Contingency Plan”** or **“NCP”** shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42

U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

**“Operation and Maintenance”** or **“O & M”** shall mean all activities required to maintain or monitor the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved by EPA and the Remedial Action Work Plan.

**“Paragraph”** shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

**“Parties”** shall mean the United States and the Settling Defendants.

**“Past Response Costs”** shall mean all response costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through April 30, 2005, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date that are not otherwise reimbursed to the United States under the 1994 Consent Decree.

**“Performance Standards”** shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in RODs 1 and 2 and the Remedial Action Work Plan.

**“Plaintiff”** shall mean the United States.

**“RCRA”** shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

**“Records of Decision”** or **“RODs”** shall mean the two EPA Records of Decision relating to the Wauconda Site. The first ROD, or ROD1, was executed on September 30, 1985, and the second ROD, or ROD2, was executed on March 31, 1989.

**“Remedial Action”** shall mean those activities, except for Operation and

Maintenance, to be undertaken by the Settling Defendants to implement ROD 1 and ROD 2 in accordance with this Consent Decree and the final Remedial Action Work Plan and other plans approved by EPA.

**“Remedial Action Work Plan”** or **“RAWP”** shall mean Appendix A to this Consent Decree and approved by EPA, and any amendments thereto.

**“Section”** shall mean a portion of this Consent Decree identified by a Roman numeral.

**“Settling Defendants”** shall mean those Parties identified as Defendants in the Caption to this Consent Decree.

**“Site”** shall mean the Wauconda Sand & Gravel Superfund Site, encompassing parcels 09-24-100-001; 09-24-102-001; and 09-24-102-002, located in Lake County, Illinois, north of the Village of Wauconda, and all areas where contamination disposed of at the Site has migrated.

**“State”** shall mean the State of Illinois, acting through the Illinois Environmental Protection Agency.

**“Supervising Contractor”** shall mean the principal contractor retained by the Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

**“Unilateral Administrative Order”** or **“UAO”** shall mean the two UAO’s issued by EPA relating to the Site. The first UAO, or UAO1, was signed by the Director of the Waste Management Division, EPA Region 5 on December 19, 1989. The second UAO, or UAO2, was signed by the Director of the Superfund Division, EPA Region 5 on September 27, 2004. The

effective date of UAO2 was suspended until the effective date of this Consent Decree.

**“United States”** shall mean the United States of America.

**“Waste Material”** shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

**“Work”** shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

## **V. GENERAL PROVISIONS**

**5. Objectives of the Parties.** The objectives of the Parties in entering into this Consent Decree are to enter into a complete settlement of specified claims by the United States with regard to the Site designed to protect public health, welfare, and the environment at the Site by the design and implementation of response actions and a public water system at the Site by the Settling Defendants, to reimburse the Plaintiff’s response costs, to resolve the Plaintiff’s claims under RCRA and CERCLA against Settling Defendants as provided in this Consent Decree, and to incorporate all prior requirements and obligations under AOC1, AOC2, UAO1, and the 1994 Consent Decree in one document to ensure consistency, compliance, and enforceability.

**6. Recognition of Settling Defendants’ Performance.** EPA hereby recognizes and acknowledges that Settling Defendants have in the past complied with administrative orders issued by EPA which have become effective with respect to the Site. EPA recognizes that Settling Defendants have, by their early implementation of portions of the Work required by this

Consent Decree, acted proactively to protect human health and the environment.

**7. Commitments by Settling Defendants.**

a. Settling Defendants shall finance and perform, or cause to be financed and performed, the Work in accordance with this Consent Decree, the RODs, the RAWP, and all other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants regarding the financing and performing of the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

**8. Compliance With Applicable Law.** All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the RODs and the RAWP. The activities conducted pursuant to this Consent Decree, if approved by EPA, either expressly or tacitly, shall be considered to be consistent with the NCP. Upon entry of this Consent Decree, UAO2 is withdrawn. Compliance with this Consent Decree is deemed compliance with AOC1, AOC2, UAO1, and the 1994 Consent Decree.



**9. Permits.**

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

**VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS**

**10. Selection of Supervising Contractor.**

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 10 days after the lodging of this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Defendants shall demonstrate that the

proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs,” (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (“QMP”). The QMP should be prepared in accordance with “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling

Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

11. **Remedial Action Work Plan.** The Remedial Action Work Plan (“RAWP”) is attached to this Consent Decree as Appendix A. It is incorporated into this Consent Decree and is enforceable as part of the Consent Decree.

12. **Other Plans.** The Health and Safety Plan (“HASP”), Quality Assurance Project Plan (“QAPP”), Operation and Maintenance Plan (“O& M Plan”) and the Sampling, Analysis, and Monitoring Plan (“SAMP”), have been submitted by the Settling Defendants for EPA approval in accordance with the provisions of Paragraph 36 of this Consent Decree.

13. **Modification of the RAWP or Related Work Plans.**

a. If EPA determines that modification to the work specified in the RAWP and/or in other plans developed pursuant to the RAWP is necessary to achieve and maintain the effectiveness of the remedy set forth in the RODs, EPA may require that such modification be incorporated in the RAWP and/or such plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the RODs.

b. For the purposes of Paragraphs 13, 48, and 49 only, the “scope of the remedy selected in the RODs” is understood by the Parties to include all “remedial” work, as those terms are defined in CERCLA and the NCP, performed by and/or to be performed by the Settling Defendants with regard to the Site pursuant to ROD 1 and ROD 2, AOC 1 and AOC 2, UAO1, and the work described in this Consent Decree, including the RAWP and those contingent actions specified in the RAWP.

c. If Settling Defendants object to any modification determined by EPA to be

necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 66 (record review). The RAWP and other plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendants shall implement any work required by any modifications incorporated in the RAWP and other plans in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

14. Settling Defendants acknowledge and agree that nothing in this Consent Decree or the RAWP constitutes a warranty or representation of any kind by the Plaintiff that compliance with the work requirements set forth in the RAWP will achieve the Performance Standards.

15. a. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

(1) The Settling Defendants shall include in the written notification the following information, where available:

(a) the name and location of the facility to which the Waste Material is to be shipped;

(b) the type and quantity of the Waste Material to be shipped;

(c) the expected schedule for the shipment of the Waste Material;  
and

(d) the method of transportation.

The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 15.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Settling Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440. Settling Defendants shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

## **VII. REMEDY REVIEW**

**16. Periodic Review.** Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct additional reviews of whether the Remedial Action is protective of human health and the environment, which EPA will conduct at least every five years as required by Section 121(c), 42 U.S.C. § 9621(c) of

CERCLA and any applicable regulations.

**17. EPA Selection of Further Response Actions.** If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

**18. Opportunity To Comment.** Settling Defendants and, if required by Section 7003 of RCRA and Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

**19. Settling Defendants' Obligation To Perform Further Response Actions.** If EPA selects further response actions for the Site, the Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 81 or Paragraph 82 (concerning the United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 81 or Paragraph 82 of Section XXI (Covenants Not To Sue by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 66 (record review).

**20. Submissions of Plans.** If Settling Defendants are required to perform further

response actions pursuant to Paragraph 19, they shall submit a plan for such work to EPA for approval within 30 days of notice by EPA of the need for additional response actions, and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

### **VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS**

21. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all compliance and monitoring samples in accordance with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” (EPA/240/B-01/003, March 2001), “Guidance for Quality Assurance Project Plans (QA/G-5)” (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the “Contract Lab Program Statement of Work for Inorganic Analysis” and the “Contract Lab Program Statement of Work for Organic Analysis,” dated May 1999, and any amendments made thereto during the

course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Settling Defendants may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA equivalent QA/QC program. Settling Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

22. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendants shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Defendants to take split or duplicate samples of any samples they take as part of the Plaintiff's oversight of the Settling Defendants' implementation of the Work.



23. Settling Defendants shall submit to EPA two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

24. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

#### **IX. ACCESS AND INSTITUTIONAL CONTROLS**

25. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, and the other Settling Defendants, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 85 of this Consent Decree;

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);

(9) Assessing Settling Defendants' compliance with this Consent Decree; and

(10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures performed pursuant to ROD 1 or ROD 2 or to be performed pursuant to this Consent Decree.

26. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall use best efforts to secure from such persons an agreement to provide access thereto for Settling Defendants, as well as for the United States

on behalf of EPA and the State as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a of this Consent Decree;

27. For purposes of Paragraph 26 of this Consent Decree and in light of the specific circumstances of this Site, “best efforts” includes the payment of reasonable sums of money in consideration of access, access easements, and land/water use restrictions. If (a) any access or land/water use restriction agreements required by Paragraph 26 of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, or (b) any access easements required by Paragraph 26 of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of entry of this Consent Decree, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 26 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access and/or land/water use restrictions, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

28. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the RODs, ensure the integrity and protectiveness thereof, or ensure

non-interference therewith, Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls.

29. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

#### **X. REPORTING REQUIREMENTS**

30. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State written progress reports that:

(a) describe the actions which have been taken toward achieving compliance with this Consent Decree for the previous month (and changing to the previous quarter 2 years after the effective date of the Consent Decree unless otherwise directed by EPA) during construction of the public water system and monitoring thereafter;

(b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous period;

(c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous period;

(d) describe all actions, including, but not limited to, data collection and implementation of work plans that are scheduled for the next reporting period and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts;

(e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;

(f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and

(g) describe all activities undertaken under EPA's supervision pursuant to Section XXX (Community Relations) during the previous period and those to be undertaken in the next reporting period. Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every reporting period following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 49.b of Section XIV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

31. The Settling Defendants shall notify EPA of any change in the schedule described in the periodic progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

32. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project

Coordinator is available, the Emergency Response Section, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

33. Within 20 days of the onset of any event described in the previous Paragraph, Settling Defendants shall furnish to the Plaintiff and the State a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

34. Settling Defendants shall submit to EPA a copy of all plans, reports, and data required by the RAWP or any other approved plans in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit a copy of all such plans, reports and data to the State. Upon request by EPA, Settling Defendants shall submit in electronic form all portions of any report or other deliverable Settling Defendants are required to submit pursuant to the provisions of this Consent Decree.

35. All reports and other documents submitted by Settling Defendants to EPA (other than the periodic progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

#### **XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and

comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 36(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 36(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

**38. Resubmission of Plans.**

a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendants shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 30-day

period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 39 and 40.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

39. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.



41. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

## **XII. PROJECT COORDINATORS**

42. Within 20 days of lodging this Consent Decree, Settling Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

43. The Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the National Contingency Plan, 40

C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

### **XIII. PERFORMANCE GUARANTEE**

44. Each year on the anniversary of the entry of this Consent Decree and continuing until EPA issues a Certification of Completion of the Remedial Action pursuant to Section XIV of this Consent Decree, Settling Defendants shall submit to the United States and the State an audited financial statement for one of the Settling Defendants demonstrating that the Settling Defendant has 1) a net worth of not less than \$1,000,000,000; 2) a debt to equity ratio of not more than 4.0; and 3) ninety percent (90%) of the assets and liabilities which are used to calculate items 1 and 2 are located in the United States.

In the event no Settling Defendant is able to make a demonstration as required above, Settling Defendants shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of \$2,923,980.00 in one or more of the following forms:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State

agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration by one or more Settling Defendants that each such Settling Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Settling Defendant or (ii) a company that has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with at least one Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of Work that it proposes to guarantee hereunder.

45. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 44.f of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part

264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 44.e or 44.f, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part

264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 44 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

46. If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 44 above after entry of this Consent Decree, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

47. Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendants

may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

#### **XIV. CERTIFICATION OF COMPLETION**

##### **48. Completion of the Remedial Action.**

a. Within 90 days after Settling Defendants conclude that the Remedial Action has been fully performed, the Settling Defendants shall submit to EPA, with a copy for the State, a written report requesting certification for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). In the report, a registered professional engineer shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or by the professional engineer:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree, EPA will notify the Settling Defendants in writing of the activities that must be undertaken by the Settling Defendants pursuant to this Consent Decree to complete the Remedial Action, provided, however, that EPA may only require the Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the “scope of the remedy selected in the RODs,” as that

term is defined in Paragraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the RAWP or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). The Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion, and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

**49. Completion of the Work.**

a. Within 90 days after Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this

Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the RODs," as that term is defined in Paragraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the RAWP or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants, and after a reasonable opportunity to review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

**XV. EMERGENCY RESPONSE**

50. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 51, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA Emergency Response Unit, Region 5. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the RAWP. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA all costs of the emergency response action undertaken by EPA not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

51. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site; or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or



minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiff).

## **XVI. PAYMENTS FOR RESPONSE COSTS**

### **52. Payments for Past Response Costs.**

a. Within 30 days of the Effective Date, Settling Defendants shall pay to the United States \$31,045.84, in payment for Past Response Costs. Payment pursuant to this Paragraph shall be by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2007V00949, EPA Site/Spill ID Number 0581, and DOJ Case Number 90-11-2-153/1. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the Northern District of Illinois following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. The total amount to be paid by Settling Defendants pursuant to Subparagraph 52.a shall be deposited in the Wauconda Sand & Gravel Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

**53. Payments for Future Response Costs.**

a. Settling Defendants shall reimburse to the EPA Hazardous Substance Superfund all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Settling Defendants a bill requiring payment that includes an Itemized Cost Summary (ICS) Statement which includes direct and indirect costs incurred by EPA, DOJ and their contractors. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 54. Settling Defendants shall make all payments required by this Paragraph according to the following procedures:

(i) If the payment amount demanded in the bill is more than \$10,000, payment shall be made to U.S. EPA by Electronics Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to the Settling Defendants by U.S. EPA Region 5. Payment shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number 0581, and the Court docket number for this action.

(ii) If the amount demanded in the bill is \$10,000 or less, the Settling Defendants may in lieu of the procedures in Subparagraph 53(a)(i) make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 0581, and DOJ Case Number 90-11-2-153/1. Settling Defendants shall send the check(s) to:

U.S. EPA - Region 5  
P.O. Box 371531

Pittsburgh, PA 15251-7531

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. The total amount to be paid by Settling Defendants pursuant to Subparagraph 53.a shall be deposited in the Wauconda Sand & Gravel Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

54. Settling Defendants may contest payment of any Future Response Costs under Paragraph 53 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP or the provisions of this Consent Decree. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 53. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Illinois and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the

uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 53. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 53; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

55. In the event that the payments required by Paragraph 53 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph

70. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 53.

## **XVII. INDEMNIFICATION AND INSURANCE**

### **56. Settling Defendants' Indemnification of the United States.**

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 56, and shall consult with Settling Defendants prior to settling such claim.

57. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

58. As of the date of lodging of this Consent Decree, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Subparagraph 48.b of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of \$3 million dollars, combined single limit, and automobile liability insurance with limits of \$1 million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of

this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

### **XVIII. FORCE MAJEURE**

59. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. “Force Majeure” does not include financial inability to complete the Work or a failure to attain the Performance Standards.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's

Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 5 days of when Settling Defendants first knew that the event might cause a delay. Within 10 days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

61. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If



EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

62. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 59 and 60, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

#### **XIX. DISPUTE RESOLUTION**

63. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

64. Any dispute which arises under or with respect to this Consent Decree shall in the

first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

**65. Statements of Position.**

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 66 or Paragraph 67.

b. Within 15 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 66 or 67. Within 15 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 66 or 67, the parties to the dispute shall follow

the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 66 and 67.

66. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the RODs' provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 66.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 66.b shall be

reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 66.a.

67. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 65, the Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

68. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 76. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

## **XX. STIPULATED PENALTIES**

69. Settling Defendants shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 70 and 71 for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure).

“Compliance” by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the RAWP, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

### **70. Stipulated Penalty Amounts - Work.**

a. The following stipulated penalties shall accrue per violation per day for failure

to complete work identified in the milestones set forth in the RAWP:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 14th day
\$1,000.00	15th through 30th day
\$5,000.00	31st day and beyond

**71. Stipulated Penalty Amounts - Reports.**

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents, including but not limited to notifications, pursuant to this Consent Decree or RAWP:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250.00	1st through 14th day
\$500.00	15th through 30th day
\$1,000.00	31st day and beyond

72. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under Paragraph 66.b or 67.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution),

during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

73. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

74. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA - Region 5, P.O. Box 371531, Pittsburgh, PA 15251-7531, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region 5, CERCLA Number 0851, and DOJ Case Number 90-11-2-153A, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the Director, Superfund Division, U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604, and to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station,

Washington, D.C. 20044.

75. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

76. Penalties shall continue to accrue as provided in Paragraph 72 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

77. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 74.



78. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

79. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

#### **XXI. COVENANTS NOT TO SUE BY PLAINTIFF**

80. **United States' Covenant Not to Sue.** In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 81, 82, and 84 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607, relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the Past Response Costs payments required by Paragraph 52 of Section XVI (Payments for Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action (installation of the municipal water lines and monitoring wells) by EPA pursuant to Paragraph 48.b of Section XIV (Certification of Completion). These covenants not to

sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

**81. United States' Pre-certification Reservations.** Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants:

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response if, prior to

Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

**82. United States' Post-certification Reservations.** Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response if, subsequent to

Certification of Completion of the Remedial Action:

(1) conditions at the Site, previously unknown to EPA, are discovered, or

(2) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

83. For purposes of Paragraph 81, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of January 31, 2006, and set forth in the March 31, 1989 Record of Decision, the administrative record supporting the Record of Decision, UAO2, the administrative record supporting UAO2, and those documents set forth in Appendix B. "Information and conditions known to EPA" does not include the possibility that vinyl chloride or any other contaminant exists in groundwater in locations or concentrations beyond those made known to EPA as of January 31, 2006, as specified above. For purposes of Paragraph 82, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the March 31, 1989 Record of Decision, the administrative record supporting the Record of Decision, UAO2, the administrative record supporting UAO2, and those documents set forth in Appendix B, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action. "Information and conditions known to EPA" does not include the possibility that vinyl chloride or any other contaminant exists in groundwater in locations or concentrations beyond those made known to EPA as of January 31, 2006, as specified above.

84. **General reservations of rights.** The United States reserves, and this Consent

Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the RODs, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 13 (Modification of the RAWP).

85. **Work Takeover.** In the event EPA determines that Settling Defendants have

ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 66, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Payment for Response Costs).

86. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XXII. COVENANTS BY SETTLING DEFENDANTS**

87. **Covenant Not to Sue.** Subject to the reservations in Paragraph 88, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site, past response actions, and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;
- b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or
- c. any claims arising out of response actions at or in connection with the Site,

including any claim under the United States Constitution, the Illinois Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

88. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671 and/or a State employee; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

89. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

**XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

90. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

91. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree.

92. **Matters Addressed.** The “matters addressed” in this Consent Decree include all “removal” and “remedial” work, as those terms are defined in CERCLA and the NCP, performed in the past by and/or to be performed in the future by the Settling Defendants with regard to the Site and all Past Response Costs, Future Response Costs, and Future Oversight Costs pursuant to ROD1, ROD2, AOC1, AOC2, UAO1, the 1994 Consent Decree, and this Consent Decree. “Matters addressed” do not include any matter reserved by the United States under Paragraphs 81 and 82 of this CD.

93. The Settling Defendants agree that with respect to any suit or claim for cost recovery or contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or

claim.

94. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify in writing the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

95. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff).

#### **XXIV. ACCESS TO INFORMATION**

96. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information



gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

**97. Business Confidential and Privileged Documents.**

a. Subject to Paragraph 98, Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to the Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the

grounds that they are privileged.

98. No claim of confidentiality or privilege shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

## **XXV. RETENTION OF RECORDS**

99. Until 5 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 49.b of Section XIV (Certification of Completion of the Work), each Settling Defendant or Settling Defendants collectively, as applicable, shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in their possession or control or which come into their possession or control that relate in any manner to their liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in their possession or control or which come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate

document retention policy to the contrary.

100. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

101. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

## **XXVI. NOTICES AND SUBMISSIONS**

102. Whenever, under the terms of this Consent Decree, written notice is required to

be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-2-153A

and

Director, Superfund Division  
United States Environmental Protection Agency  
Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

As to EPA:

Mark Koller  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 5  
Mail Station C-14J  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

and

Lolita Hill  
EPA Project Coordinator  
United States Environmental Protection Agency  
Region 5  
Mail Station SR-6J  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

As to the Regional Financial Management Officer:

Regional Financial Manager  
United States Environmental Protection Agency  
Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

As to the State

Eric Runkel  
State Project Coordinator  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

As to the Settling Defendants:

Peter J. Kelly  
Vedder, Price, Kaufman & Kammholz  
222 North LaSalle  
Chicago, Illinois 60601

**XXVII. EFFECTIVE DATE**

103. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

**XXVIII. RETENTION OF JURISDICTION**

104. This Court retains jurisdiction over both the subject matter of this Consent

Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

#### **XXIX. APPENDICES**

105 The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the Remedial Action Work Plan.

“Appendix B” is the list of documents referred to in Paragraph 83.

#### **XXX. COMMUNITY RELATIONS**

106. Settling Defendants shall propose to EPA their participation in the Revised Community Involvement Plan. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA in providing to the public information regarding the Work. As requested by EPA, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site. Settling Defendants deny certain statements made in the Revised Community Involvement Plan. No statement of fact set forth in the Revised Community Involvement Plan shall be deemed by and of itself to be an admission by Settling Defendants.

#### **XXXI. MODIFICATION**

107. There shall be no modification of the Consent Decree, other than the RAWP, without the written agreement of the Parties filed with the Court. Any material modification of the Consent Decree shall be approved by the Court.

108. Schedules specified in the RAWP for completion of the Work may be modified by written agreement of EPA and the Settling Defendants. Except as provided in Paragraph 13 (Modification of the RAWP or Related Work Plans), no material modifications shall be made to the RAWP without written notification to and written approval of the United States, Settling Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the RAWP that do not materially alter that document, or material modifications to the RAWP that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii), may be made by written agreement between EPA and the Settling Defendants.

109. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

#### **XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

110. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to

withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.

Settling Defendants consent to the entry of this Consent Decree without further notice.

111. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

### **XXXIII. SIGNATORIES/SERVICE**

112. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

113. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

114. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court



expressly declines to enter this Consent Decree.

#### **XXXIV. FINAL JUDGMENT**

115. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

116. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_ DAY OF \_\_\_\_\_, 2007.

---

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

**FOR THE UNITED STATES OF AMERICA**

\_\_\_\_\_  
Date

\_\_\_\_\_  
W. BENJAMIN FISHEROW  
Deputy Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

8/8/07  
\_\_\_\_\_  
Date

\_\_\_\_\_  
STEVEN D. ELLIS  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Telephone (202) 514-3163  
[steven.ellis@usdoj.gov](mailto:steven.ellis@usdoj.gov)

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR THE UNITED STATES OF AMERICA (Cont.)

PATRICK J. FITZGERALD  
United States Attorney  
Northern District of Illinois

8/7/07  
Date

JONATHAN C. HAILE  
Assistant United States Attorney  
Northern District of Illinois  
219 South Dearborn Street  
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc., relating to the Wauconda Sand & Gravel Superfund Site.

FOR THE UNITED STATES OF AMERICA (Cont.)

3/29/07  
Date

52 RICHARD C. KARL  
Superfund Division Director, Region 5  
U.S. Environmental Protection Agency  
77 West Jackson, Blvd.  
Chicago, IL 60604

3/20/2007  
Date

Mark J. Koller  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson, Blvd. (C-14J)  
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR BFI Waste Systems of North America, Inc.

Signature: \_\_\_\_\_

Date Name (print): 1/26/07 Eric Ballenger

Title: Manager Hydrogeology

Address: Mallard Lake Landfill

26 W. 580 Schick Rd.  
Hanover Park, IL 60133

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Thomas A. Ryan

Title: Counsel

Address: 2345 Grand Boulevard

Kansas City, MO 64108

816-292-2000

Ph. Number: \_\_\_\_\_

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR Borden Chemical, Inc. (n/k/a Hexion Specialty Chemicals, Inc.) as  
Signature: [Signature], successor to IB Distributors, Inc.

Date Name (print): Bruce White

Title: Attorney and Authorized Representative

Address: Karaganis White & Magel Ltd.  
414 North Orleans Street, Suite 810  
Chicago, Illinois 60610

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): William Haak

Title: Senior EH&S Counsel

Address: 180 Broad Street  
Columbus, Ohio 43215

Ph. Number: (614)225-3369

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR EXXON MOBIL CORPORATION

Signature: \_\_\_\_\_

Date Name (print): 08/26/07 Andrew T. Warrell

Title: Global Remediation Manager (Major Projects)

Address: 3225 Gallows Road  
Fairfax, VA 22037

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Illinois Corporation Service Company

Title: \_\_\_\_\_

Address: 801 Adlai Stevenson Drive  
Springfield, IL 62703

Ph. Number: (217) 522-1010

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc., *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR: Giddings & Lewis Machine Tools, LLC, as successor in interest to Basic Electronics Mfg. Corp.

Signature: \_\_\_\_\_

Name (Print): Elizabeth Sitterly

Date: 2/9/07

Address: Giddings & Lewis Machine Tools, LLC

142 Doty Street

Fond du Lac, WI 54935

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (Print): James M. Porter

Title: Attorney

Address: 2920 SunTrust International Center

One Southeast Third Ave.

Miami, FL 33131

Ph. Number: 786 425-2299

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR H.B. Fuller Company, /  
Signature: \_\_\_\_\_  
Date Name (print): February 7, 2007  
Title: General Counsel and Corporate Secretary  
Address: 1200 Willow Lake Boulevard  
P.O. Box 64683  
St. Paul, MN 55164-0683

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): CT Corporation System  
Title: \_\_\_\_\_  
Address: 208 S. LaSalle Street, Suite 814  
Chicago, IL 60604

Ph. Number: 312-263-1414

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. BFI Waste Systems of North America, Inc. et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

For HONEYWELL INTERNATIONAL INC. \_\_\_\_\_

Signature: \_\_\_\_\_

Date & Name (print): Troy (Meyer) Kennedy \_\_\_\_\_

Title: Remediation Portfolio Director \_\_\_\_\_

Address: Health, Safety, Environmental and Remediation

Honeywell International Inc. \_\_\_\_\_

101 Columbia Drive \_\_\_\_\_

Morristown, NJ 07962 \_\_\_\_\_

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Brian D. Israel, Arnold & Porter LLP \_\_\_\_\_

Title: Counsel \_\_\_\_\_

Address: 555 12<sup>th</sup> Street \_\_\_\_\_

Washington, DC 20004 \_\_\_\_\_

Ph. Number: 202-942-6546 \_\_\_\_\_

FROM LATHAM &amp; WATKINS NEWARK

(TUE) 2.27' 07 10:31/ST. 10:26/NO. 4861372791 P 5

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. et al., relating to the Wauconda Sand & Gravel Superfund Site.

FOR Jensen Disposal Service, Inc.

Signature: \_\_\_\_\_

Date Name (print): Grace ObernuepTitle: Chairman of the BoardAddress: 3336 N. Betty Ave  
Arlington Heights IL  
60004

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Ph. Number: \_\_\_\_\_

\* / A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR Mail-Well Envelope Co.  
Signature: [Signature]  
Date Name (print): 2/14/07 J. MICHAEL DAVIS  
Title: CHIEF COUNSEL ENVIRONMENTAL  
Address: 133 PEACHTREE STREET  
ATLANTA, GA 30303

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Ph. Number: \_\_\_\_\_

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

Morton International, Inc. (A Rohm and Haas Company)

FOR \_\_\_\_\_

Signature: \_\_\_\_\_ )

Date Name (print): Jacques Croisetiere February 14, 2007

Title: Vice President and Chief Financial Officer

Address: 100 Independence Mall West

Philadelphia, PA 19106

\_\_\_\_\_  
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Jeffrey C. Wyant

Title: Chief Regulatory Counsel

Address: 100 Independence Mall West

Philadelphia, PA 19106

\_\_\_\_\_  
Ph. Number: 215-592-6782

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

FROM LATHAM &amp; WATKINS NEWARK

(TUE) 2.27.07 10:32/ST. 10:28/NO. 4861372781 P 6

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. et al., relating to the Wauconda Sand & Gravel Superfund Site.

FOR Mundelein Disposal Service, Inc.

Signature: \_\_\_\_\_

Date Name (print): Grace Obenaut

Title: Chairman of the Board

Address: 3336 W. Betty Dr.

Arlington Heights, IL  
60004

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Ph. Number: \_\_\_\_\_

\* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

FOR Village of Wauconda, Illinois  
Signature: \_\_\_\_\_  
Date Name (print): SALVATORE J. SACCOMANNO  
Title: MAYOR  
Address: 101 N. MAIN STREET  
WAUCONDA, ILLINOIS 60084

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): DANIEL E. QUICK  
Title: VILLAGE ADMINISTRATOR  
Address: 101 N. MAIN STREET  
WAUCONDA, ILLINOIS 60084

Ph. Number: (847) 526-9700

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. et al., relating to the Wauconda Sand & Gravel Superfund Site.

FOR Waste Management of Illinois Inc. /

Signature: /  
Date Name: Jack Dowden January 22, 2007  
Title: Area Director  
Address: 720 Butterfield Road  
Lombard, IL 60148

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: CT Corporation System  
Address: 208 S. LaSalle Street  
Suite 814  
Chicago, IL 60604  
Ph. Number: 312/345-4336

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.



FROM LATHAM &amp; WATKINS NEWARK

(TUE) 2:27:07 PM 10:31/ST. 10:23/NO. 4861372781 P 4

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v BFI Waste Systems of North America, Inc. et al., relating to the Wauconda Sand & Gravel Superfund Site.

FOR Wauconda Sand and Gravel Company

Signature: \_\_\_\_\_

Date Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

3336 N. Betty Dr.  
Arlington Heights, IL  
60004

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Ph. Number: \_\_\_\_\_

\* / A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. BFI Waste Systems of North America, Inc. *et al.*, relating to the Wauconda Sand & Gravel Superfund Site.

Weber Foreign Manufacturing Inc.  
f/k/a Ink Specialties Company, Inc.

Signature: \_\_\_\_\_

Name (print): GEORGE A. STIEBER

Title: VICE PRESIDENT OF MANUFACTURING

Address: George Stieber

Weber Marking Systems, Inc.

711 W. Algonquin Road

Arlington Heights, IL 60050

Date: 2-14-2007

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Louis M. Rundio, Jr.  
McDermott Will & Emery  
227 West Monroe Street  
Chicago, IL 60606

\*/A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.